

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RAMIREZ, RUBEN

TDCJ No. 18919361

Plaintiff.

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FEAZEL ET AL

Defendants.

CIVIL ACTION No. 5:15-cv-00333

Defendants Rivera and Mize's Answer to Plaintiff's Original Complaint and Jury Demand

Defendants Mariano Rivera and Matthew Mize, by and through the Attorney General of the State of Texas, and files this Answer in response to Plaintiff Ruben Ramirez's Original Complaint.

General Denial

1. Pursuant to Rule 8(b), and for the express purpose of requiring Plaintiff to meet his burden of proof herein, Defendants Rivera and Mize deny each and every allegation contained in Plaintiff's Complaint except those admitted to below.

Specific Admissions and Denials

2. Defendants Rivera and Mize admit that Plaintiff was an inmate confined to the custody of the Texas Department of Criminal Justice (TDCJ).
3. Defendants Rivera and Mize admit that they were employed with TDCJ during the time relevant to Plaintiff's Complaint.
4. Defendants Rivera and Mize admit that TDCJ is an agency of the State of Texas.

5. Defendants Rivera and Mize contend that Plaintiff has not stated a claim upon which relief can be granted under 42 U.S.C. § 1983 or under any other statute, constitutional theory, or legal authority.
6. Defendants Rivera and Mize deny that Plaintiff was denied any right, privilege, or protection granted or secured by the Constitution or laws of the United States.
7. Defendants Rivera and Mize contend that Plaintiff has failed to state a claim that amounts to cruel and unusual punishment in violation of the Eighth Amendment.
8. Defendants Rivera and Mize deny that they are liable for failing to protect the Plaintiff in violation of the Eighth Amendment of the U.S. Constitution.
9. Defendants Rivera and Mize deny that they acted individually or in concert with others to engage in illegal conduct to injure Plaintiff.
10. Defendants Rivera and Mize deny that they acted maliciously and sadistically for the very purpose of causing harm to Plaintiff.
11. Defendant Rivera and Mize deny that they acted in retaliation against Plaintiff.
12. Defendants Rivera and Mize deny that Plaintiff is entitled to any relief demanded in his Complaint, and further deny that Plaintiff is entitled to damages, attorney's fees, or costs in any amount whatsoever.

Affirmative Defenses and Immunities

13. Defendants Rivera and Mize deny that Plaintiff may bring this suit without first exhausting administrative remedies. Defendants Rivera and Mize will file a motion to dismiss for failure to exhaust should it become evident that Plaintiff has failed his burden to properly exhaust all administrative remedies.

14. Defendants Rivera and Mize assert that, at all times relevant to this cause of action, they acted in their individual and official capacities as employees of TDCJ and with the good faith belief that their actions were proper under the Constitution and laws of the United States and the State of Texas.
15. Defendants Rivera and Mize assert their entitlement to qualified immunity against the 42 U.S.C. § 1983 cause of action and any other federal claim asserted against them in their individual capacities.
16. Defendants Rivera and Mize assert their entitlement to Eleventh Amendment immunity, which bars any claims for damages that may have been brought against them in their official capacities.
17. Defendants Rivera and Mize would show that the damages or injuries which may be proven by the Plaintiff, if any, were a result of Plaintiff's own misconduct, negligence, and/or intentional acts or omissions.
18. Defendants Rivera and Mize assert that if any force was used against Plaintiff, such use of force was a privileged use of force.
19. Defendants Rivera and Mize assert that any claim premised upon the law of negligence will not support a claim of constitutional dimension under 42 U.S.C. § 1983.
20. Defendants Rivera and Mize assert that this suit is frivolous and without merit, and as such, Defendants Rivera and Mize are entitled to recover from Plaintiff the amount of attorney's fees and costs incurred in defending this suit, pursuant to 42 U.S.C. § 1988.

Jury Demand

21. Defendants Rivera and Mize demand a jury trial should trial become necessary.

Conclusion

22. Defendants Rivera and Mize prays that Plaintiff take nothing and that they be awarded their costs, and have such other and further relief, general and specific, at law and in equity, to which they may be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

KAREN D. MATLOCK
Assistant Attorney General
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/s/ KIMBERLY L. KAUFFMAN
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**ATTORNEYS FOR DEFENDANTS RIVERA
AND MIZE**

NOTICE OF ELECTRONIC FILING

I, **KIMBERLY L. KAUFFMAN**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing a correct copy of the foregoing **Defendants Rivera and Mize's Answer to Plaintiff's Original Complaint and Jury Demand** in accordance with the Electronic Case Files System of the Western District of Texas, on June 9, 2015.

/s/ KIMBERLY L. KAUFFMAN
KIMBERLY L. KAUFFMAN
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **KIMBERLY L. KAUFFMAN**, Assistant Attorney General of Texas, certify that a true copy of the above **Defendants Rivera and Mize's Answer to Plaintiff's Original Complaint and Jury Demand** has been served by placing it in the United States Postal Service, postage prepaid, on June 9, 2015, addressed to:

Ruben C. Ramirez, No. 819361
TDCJ - Polunsky Unit
1872 FM 350 South
Livingston, TX 77351
Plaintiff Pro Se

/s/ KIMBERLY L. KAUFFMAN
KIMBERLY L. KAUFFMAN
Assistant Attorney General